

Testimony of Hon. Joshua Gotbaum
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before the

Committee on Governmental Affairs
United States Senate

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Mr. Chairman and members of the Committee,

I am grateful for the opportunity to present the Administration's proposal for streamlining the Inspectors General (IG) use of their law enforcement authority, and to comment on S. 870, the IG Act Amendments introduced by Senator Collins. This Administration has continued the longstanding bipartisan tradition of support for the IGs. The members of the IG community are, I know, also extremely grateful that the Committee is taking time to consider how they might increase their effectiveness.

Before getting to the substance of today's issue, I would like to mention another shared interest between the Administration and the Committee. As a result of recent actions by the President, we currently have nominees for all four unfilled IG positions before the Congress. I hope the Committee considers these nominations expeditiously and encourages its colleagues in the Senate to do so. If confirmed, it would be the first time in many years that all PAS IG slots were filled.

Streamlining IG Law Enforcement Authority

We are extremely grateful that the Committee is considering the Administration's proposal to streamline the process through which the IG's exercise their existing law enforcement authority.

This is, I understand, an issue that has been discussed within the IG community and with the Department of Justice for many years. In the past year, we have worked hard to develop a compromise proposal that cuts red tape for the IG's and permits them to fulfill their longstanding law enforcement mission, while preserving accountability and maintaining the oversight of the Attorney General. The Administration submitted a proposal to Congress just this past February.

As this Committee knows, IG's have been involved in law enforcement ever since they were created. The IG criminal investigator community has a solid 22-year record of conducting successful law enforcement operations addressing the problems of fraud, abuse, waste, and wrongdoing in federal programs. In the last decade, the IGs achieved more than 122,000 successful criminal prosecutions and obtained over \$13 billion in investigative recoveries. In addition, federal agencies took more than 19,000 personnel actions based on IG investigations during the same period.

As IGs became involved in the investigation of external criminal conspiracies against government programs, firearms, arrest and warrant powers became necessary to ensure agent and public safety and to reduce requests for traditional Federal law enforcement agency personnel support in the more dangerous aspects of investigations. OIG criminal investigators are already required to meet the same rigorous qualifications as other Federal law enforcement officers, and receive the same federal law enforcement training in firearms, search and seizure, evidence, etc.

Until the last few years, IGs received the authority to conduct their investigations with the usual law enforcement tools through *case-by-case deputations* as special Deputy U.S. Marshals from the U.S. Marshals Service. Deputation is the process by which a criminal investigator without statutory authority to make arrests, carry firearms, serve warrants, execute search warrants, etc., is provided that authority. The OIGs had to apply for a deputation for each agent for each case where they might need law enforcement authority. This led to excessive paperwork and delays.

Former OMB Deputy Director for Management John Koskinen worked with DOJ and the OIGs to create a process for *annual* deputations of qualified OIG criminal investigators. Under an agreement with DOJ, the seven OIGs with the greatest experience in deputations received one-year blanket deputations for all qualified investigators. This pilot project specified training requirements that the investigators had to meet (including quarterly firearms training) and reporting requirements the OIGs had to provide DOJ on their use of law enforcement authority. This process did not expand OIG access to law enforcement authorities, but it did reduce the administrative burden significantly.

Over the years, DOJ has expanded the pilot. Currently, 23 OIGs are covered by annual blanket deputations. The pilot demonstrated that the OIG criminal investigators were fully capable of performing their law enforcement responsibilities in a professional manner.

Based upon the success of the pilot, last year Deputy Attorney General Eric Holder agreed to further streamline the process by eliminating the annual renewal requirement in favor of ongoing authority that remains subject to DOJ oversight and professional safeguards. OMB worked with DOJ and the IGs to draft the appropriate statutory language.

As I hope both your witnesses from the Department of Justice and the IG community make clear, we are making this proposal to streamline and make more effective the IG's existing law enforcement activities, not to expand them. Only fully trained criminal investigators in Offices of Inspector General (OIG) specifically designated by the Attorney General would be permitted to exercise this authority. They would do so under guidelines promulgated by the Attorney General. As an added measure of oversight, the OIGs must also establish an external review process, in consultation with the Attorney General, to ensure that this authority is exercised properly.

Attorney General Retains Oversight Authority Under our proposal, the Attorney General retains the discretionary authority to grant the law enforcement authority to additional IGs, based upon guidelines clearly delineated by the legislative language. The Attorney General also has the power to rescind any IG's authority at any time. It is important to again note that we are not seeking to increase IGs' law enforcement authority; we are looking to provide them with the

same authorities they already have through deputations and case-by-case approval via a more streamlined approach.

Additional External Review as a Safeguard Our proposal also contains a requirement that the IG community collectively establish an external review process, in consultation with the Attorney General, for ensuring that adequate internal safeguards and management procedures continue to exist within OIGs that receive law enforcement authority under this proposal. The results of each review must be provided to the Attorney General.

We believe that providing these investigators with the same law enforcement authority as their professional colleagues in the Drug Enforcement Administration, the Immigration and Naturalization Service, the United States Secret Service, the Bureau of Alcohol, Tobacco and Firearms, and other law enforcement agencies, is a good government initiative that will permit the IGs to use their existing skills and training more efficiently and allow other law enforcement agencies to focus on their respective missions.

We hope the Committee and the Congress agree and enact the proposal into law as soon as possible this year.

S. 870 & Other Possible Changes to IG Authorities

We are pleased that this Committee is considering revisions to the IG Act. The last major changes were in 1988 and, after 12 years, a review is appropriate to see how well the Act continues to fulfill its goals.

Senator Collins has for several years engaged in discussions with the IG community about possible changes in the IG Act. S. 870 raises important issues – of compensation and independence -- that deserve the attention of both the executive branch and the Congress. Nonetheless, there are some provisions in the bill about which we have concerns and would like to engage in further dialogue with Senator Collins and the Committee. Furthermore, there are some important issues on which the bill is silent; since changes to the Act are infrequent, we would hope the Committee would consider these, too, before legislating.

We agree strongly with Senator Collins that IGs, because of the independent nature of their positions, should not be eligible for performance awards from agency heads. Accepting a bonus from the agency head one might be compelled at some point to investigate for improper behavior clearly creates at least the appearance of a conflict of interest. Nonetheless, we are not sure that the right response is necessarily to raise the salaries of IGs to Executive Level 3. This blanket approach would have significant implications for other officials currently at the Executive Level 4, including Chief Financial Officers, Chief Information Officers, as well as General Counsels, Assistant Secretaries, and other senior officials. In many cases, these officials also receive no bonuses. We would welcome the opportunity to discuss IG compensation, but would hope to do so in a way that recognizes this issue more generally. One mechanism that might be considered could be the establishment of an external review and bonus pool for its outstanding members. We would also like to include in this discussion the Designated Federal Entity IGs, whose pay levels vary widely.

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We applaud the provision requiring external reviews of IG administrative operations. We suggest that the Committee might consider allowing the IG community to develop an internal mechanism similar to the audit peer review process by which IGs review each other for adherence to applicable rules and regulations. Another suggestion might be to form an external review body involving active professional oversight that draws upon experts from both the public and private sectors.

One provision that the Administration opposes S. 870 is in the creation of a 9-year term for IGs. This Administration, like others before it, has generally opposed a term of years for Presidential appointments in the executive branch. We see no evidence even to suggest that a 9-year term is necessary to preserve the independence of the IGs. Nor do we think it would raise the already high caliber of the individuals willing to serve as IGs. In fact, establishing a 9-year term might make it harder to fill these positions: Nine years is a long time to commit to a position, and establishing an expectation of so long a term could very well reduce rather than expand the pool of qualified and interested candidates. Finally, we are concerned creation of a 9-year term might lead to “lame duck” syndrome, or at least a reduction in an IG’s level of effectiveness in the last year or so of his or her term.

Another area in which we hope there is further discussion is in S. 870’s proposal for consolidation of smaller OIGs. While there is interest within the Administration and the IG community in sharing of services among smaller offices, and even willingness to discuss consolidating smaller OIGs into larger ones, the interagency comments we received did not support the specific proposals in S.870. Before imposing any particular legislative arrangement, we would strongly prefer to give the IG community an opportunity to conduct its own review, to determine where consolidation is necessary and helpful.

There are also some areas on which S. 870 is silent, but which I think deserve the Congress’ consideration. One important issue is how the IG balances the need for independence with an increasing emphasis on agency management. For many issues reviewed by IGs, the most effective way to reduce fraud, waste, abuse and inefficiency is to change management processes and systems. In some cases, however, these changes are subtle. In some, they will require trial and error to implement -- not every individual or system succeeds, certainly not at first. In many cases, ranging from computer security to reducing errors in benefit payments, IGs possess judgment and experience that could help an agency head make improvements. If, however, an agency head believes that every consultation with an IG could become public at any time, they will be reluctant to consult at all.

As a relative newcomer to the IG community, I can’t help but notice the vast differences between IG offices. More than one IG has stated what seems to be the community’s unofficial motto: “If you’ve seen one IG, you’ve seen one IG.” Some IGs seem entirely comfortable drawing the line between advising on agency practices and reporting wrongdoing. They actively contribute to agency management, sometimes with great influence and consequence. Other IGs, equally well-meaning and implementing the very same IG Act, conclude that “independence” precludes them from such activities. As the Committee considers proposals to update the IG Act, dialogue on this issue might be very helpful. What is the proper role of the IG *vis-a-vis* the agency? When does independence become isolation? How much will agencies resist oversight by IGs if the findings automatically end up in a report to Congress or on the front page? Could the IGs, given

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their acknowledged and fiercely-guarded independence, have the latitude to decide which of their findings to report publicly? Certainly there are gross mismanagement issues that must be brought to the attention of Congress and certainly criminal behavior must be presented to the Attorney General. But what about the subtler questions of judgment concerning management decisions about people, processes and systems?

Another issue worth the attention of the Committee and the Congress is the structure and organization of the Designated Federal Entity IGs? Are they fully effective as currently configured? Should they be encouraged to consolidate or instead to coordinate, and on which of their activities?

We think S. 870 is a good start and offers the first opportunity in more than a decade to help the IGs to do what they help agencies and the Congress to do: find ways to improve their integrity and effectiveness. We hope the Committee takes advantage of this opportunity. I know the IG community would be willing participants.

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We appreciate this Committee's interest and the opportunity to convey the Administration's support for the Inspectors General. As your witness from the Department of Justice will explain, due to resource constraints, the U.S. Marshals Service will no longer provide deputation to OIGs after January 31, 2001. Therefore, we urge the Committee, after careful review, to support our proposal to streamline the Inspectors General use of law enforcement authority so that this legislation can be passed this session. We also look forward to working with Senator Collins and the other members of the Committee on the longer-term and more comprehensive effort to review and update the IG Act.

For over 20 years, IGs have worked to make government worthy of the support of its citizens. I know both the Congress and the executive branch recognize their contributions. With your continued support, they can be an even more effective advocate for good government in the years to come.